

Framework for Assessing When to Revoke the Emergencies Act Orders

The following assessment is provided to assist decision makers in determining when to revoke the proclamation made under the *Emergencies Act* (EA) on February 14, 2022, and the related orders.

The Context Leading to the Invocation of the *Emergencies Act*

A national emergency is an urgent, temporary and critical situation that seriously endangers the health and safety of Canadians that cannot be effectively dealt with by the provinces or territories, or that seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada.

For over three weeks, blockades had been illegally disrupting the life of Canadians, harming the economy, and endangering public safety. The situation culminated in four ports of entry being closed across the country, three additional ones under threat, and a significant occupation of the downtown Ottawa area.

While many participants in the blockades and demonstrations were believed to be individuals wishing to express frustration with the measures needed to fight the pandemic, there was evidence of the participation of individuals wanting to harm Canadian democracy. Their participation was believed to increase the potential for unrest and violence that would further threaten the safety and security of Canadians. Some participants in the original convoy that arrived in Ottawa had a set of demands to replace the government. In addition to the threatening rhetoric directed at the Prime Minister, individuals in the government were also the subject of threatening rhetoric. And as the intensity of the demonstrations increased, knowledge of substantial funds being raised through crowdfunding platforms and cryptocurrency brought about additional concerns.

The economic impacts of the blockades at key trade corridors between Canada and the US and the Ports of Entry was of such gravity that it was affecting the country's overall GDP and therefore threatening Canada's national interest and future economic security. In addition, the blockades impeded critical supply chains for essential goods, services and resources, which were particularly harmful as the country works to recover from the impacts of the COVID-19 pandemic.

The events unfolding in Canada were also inspired and reflected similar protests taking place internationally. What could not be determined with certainty was whether these events were linked. International financial support was one indicator, but other connections were also being assessed.

In parallel, as efforts to end the blockade at Coutts, AB, progressed, police gained information that some of the protestors were armed. Subsequent police action recovered a cache of arms and several protestors were arrested and charged with serious violent offences. What was not known, but had to be taken into account in all further actions, was whether other protest sites had similar caches of arms and protestors with similar violent intentions.

In terms of the city of Ottawa specifically, the entire downtown core was blocked by vehicles and protestors for several weeks. Local residents were harassed verbally and subject to hours and days of harmful noise. There were reports of significant impacts to people's mental and physical health. At one point air quality was demonstrated to be 4 times worse than Mexico City with respect to the harmful off-gasses of burning diesel fuel.

It was against this backdrop that it was assessed that there were serious challenges to local law enforcements' ability to effectively enforce the law and ensure public safety. The *Emergencies Act* was invoked as a necessary measure to enable unprecedented law enforcement operations to restore law and order in the City of Ottawa and to keep the Ports of Entry (POE) clear after three weeks of occupations.

Impact of the EA and Assessment of Existing Powers:

1. Emergency Management Regulations (EMR)

The EA orders provided several powers to the police and other government agencies that assisted in bringing blockades and national threats under control:

- The EMR enables the RCMP, municipal and provincial police services to enforce the EMR and any provincial or municipal laws without requiring officers to be sworn in, which allows for the assistance of outside police officers in a much less administratively burdensome way than would be otherwise be the case. Specifically, this allowed for the rapid assembly of a large police presence for the operation in Ottawa.
- Prohibition on public assembly that would disrupt the peace sent a very clear message to protestors that the trucks used to blockade borders and cities would no longer be treated as violations of parking bylaws, but would entail potentially serious penalties, where certain criteria were met. The provision also served to put protestors on notice of the specific intention to protect critical infrastructure and trade and prohibited any adult from causing a minor participate in the unlawful assembly described in the section.
- Prohibition on the entry of a foreign national into Canada for the purpose of participating in an assembly described above.
- Restriction on travel – travelling “to or within” an area where a prohibited assembly is taking place is prohibited. This provision empowered police to intercept convoys headed to Ottawa or other protest sites and to warn drivers of the prohibition. There are instances where, prior to the invocation of the EA, police were uncertain of their powers to turn trucks around. It is unclear that the police have these powers under common law. The EA provides additional essential authorities that had direct deterrent influence on protest participants.
- Use of property – The orders prohibit providing property to facilitate or participate in a prohibited assembly. This provision was meant to restrict the re-provisioning of food and fuel to protestors. The provision of fuel was of particular concern given the potential to use fuel for violent purposes.
- Designation of protected places – Section 6 designates a list of locations as protected and empowers the authorities to secure those locations.
- Direction to render essential goods and services – The Order permits the authorities to compel any person to make available essential goods and services when requested in accordance with the provisions. This section was meant to overcome the reluctance of private towing companies to provide services for the removal of trucks and other vehicles from the blockade. The provision had the desired effect, convincing private operators to provide such services voluntarily to the police. In the absence of this critical order, the police do not have the ability to compel the provision of services.

- Penalties – The penalties provided for in the regulations are significant, ranging up to 5 years in prison. While not as severe as the penalties available under the Criminal Code (e.g. up to 10 years imprisonment for mischief), the penalties under the regulations, in line with the provisions of the EA, were meant to be commensurate with the conclusion that the illegal assemblies and the threat that they posed to Canada’s safety and security, constituted an emergency of significant consequence.
- It is notable that in creating the large security zone in Ottawa, the police relied on the City of Ottawa’s injunction, ancillary police powers at common law, and sections 2, 4, and 5 of the EMR. The ability to create such a large security zone based on the common law alone is a matter that is open to debate.

2. Emergency Economic Measures Order (EEMO)

The effect of the EEMO is to cut off the financial support to protesters that helps sustain their illegal activities. The EEMO requires financial service providers stop dealing with persons involved directly or indirectly with the prohibited assemblies discussed above. Stated succinctly, financial institutions are required to freeze the bank accounts and fundraising accounts of the protestors and to report this to the authorities. The order also requires insurance companies to cease providing insurance services for insurance policies on any vehicle being used in an illegal public assembly.

In addition, the EEMO extends to crowdfunding platforms and payment service providers the obligation to register with the Financial Transactions Reports and Analysis Centre (FINTRAC) if they are in possession of property owned or controlled by persons engaged in the illegal protests. These entities are also required to report certain transactions to FINTRAC under Canada’s anti-money laundering and terrorist financing law.

The EEMO has restricted funding and other assistance for the unlawful assemblies, resulting in the freezing of 219 financial products, the disclosure of 57 entities, the addresses of 253 Bitcoin shared with virtual currency exchangers and the proactive freezing of the account of a payment processor for a value of \$3.8M by a financial institution.

The EEMO is generally assessed to have been highly effective in restricting the funding available to the protestors. There are no provisions that permit the freezing of accounts for protestors in Canada short of direct and established links to money-laundering or terrorist activity. Under the EA, the police forces have communicated to the financial entities the names and addresses of several persons involved in the protests. As a result, bank accounts and other property were frozen by the financial entities.

Summary: EA Powers and Police Powers

The EA Orders provide powers to the authorities that, under normal circumstances, are not available to the police or other enforcement agencies, including the restriction of minors at demonstrations, freezing of bank accounts, and commandeering tow trucks. Arguably the EA Orders also strengthen the ability to create secure zones in service of securing protected locations, and the ability to turn back convoys that are destined to participate in unlawful assemblies.

That said, the police employ a broad range of statutory and common law powers to disrupt and prevent illegal assembly, to protect property and to preserve the peace. These powers include, for example,

both common law and Criminal Code provisions addressing mischief, unlawful assembly, protection of property, and physical violence.

Assessment of the Current Situation and Ongoing Threat

The *Emergencies Act* sets a high threshold for the invocation of exceptional authorities, requiring a situation that poses “the potential for unrest and violence that would threaten the safety and security of Canadians” or a “threat to Canada’s national interest and future economic security”. An EA Order can continue in effect so long as this situation persists.

Since the invocation of the EA, the threat picture has changed considerably:

- Since the outset of the protests a great deal has been learned about the protestors, their affiliations and agendas. In addition to information gathered from the protestors’ ongoing use of social media, speeches, rallies, and interviews, police liaison officers worked to learn as much as possible from participants. Finally, almost 200 protestors were arrested in Ottawa. Overall, knowledge of the participants increased exponentially.
- Initially, funding sources for the protestors were largely unknown. Through the use of the EA, authorities obtained more information about the sources of funding.
- In addition, while the intentions and plans of the convoys were largely unknown at the outset of the protest, several weeks of protests have provided much hard-won knowledge of the tactics and intentions of the participants in the unlawful assemblies.

The threats that existed in Ottawa, ON; Ambassador Bridge, ON; Pacific Highway Crossing, BC; Emerson, MB, and Coutts, AB, have been significantly reduced through significant police intervention, and, in some cases, by the communication of the availability and use of powers provided by the current *Emergency Act* Orders.

Assessment as of February 21, 2022:

- All Ports of Entry are currently open and operating normally. There are gatherings of trucks close to 4 POEs but, to the extent they are protesting, activities are non-violent and legal. The movement of people and goods is not being impeded at the moment. CBSA assesses each of these situations to be within the ability of the Police of Jurisdiction to manage – meaning that these protests are not expected to interfere with POE activity. That said, there is recognition that as recently as February 19, 2022, protestors were able to disrupt operations at the Pacific Highway POE. This interruption lasted approximately 24 hours.
- Movement of truck convoys continues to be monitored with particular notice being paid to staging areas in Embrun, Metcalfe and Van Kleeck Hill, all near Ottawa. A groups of trucks originating in Sherbrooke, QC, appears to be enroute to the gathering area in Van Kleeck Hill. The RCMP assessment is that these areas are under careful surveillance of the OPP and that an operational plan has been established to maintain security in Ottawa. The assessment is that any potential threat from this group of trucks to attempt a re-occupation or illegal blockade in Ottawa can be prevented by Police of Jurisdiction using existing (non-EA) enforcement powers.
- To date, approximately 30 individuals have attempted to enter Canada for the purpose of participating in illegal protests and blockades. The majority were prevented from entering Canada based on public health authorities. 2 were prevented using the EA measures. The likelihood of foreign nationals attempting to enter Canada to support illegal protests is currently assessed as low.

- There is currently an unknown number of protestors remaining in Ottawa. The potential of this group engaging in illegal protests is difficult to assess. Since the ending of occupation of Ottawa's downtown core, small numbers (20-30) have gathered at the War Museum to protest. So far these gatherings have been orderly, non-violent and legal.
- The freezing of accounts has been assessed as having had a dissuasive effect on protestors. Even once revoked, the immediate and high impact of the economic order will continue to remind protestors that effective steps have been and will be taken, as necessary, to prevent further illegal protests and blockades. It has been noted that an orderly revocation process, working in collaboration with Financial Institutions, could be effected quickly (24 hours).

The threat that was assessed to have existed at the invocation of the EA on February 14, 2022, has, to a large extent, been mitigated. Through the increase in knowledge about the protests and their participants, there is a clearer picture that the majority of protest participants did not have sedition as an objective and there is no evidence that extremist elements that infiltrated the protest activities intended to use those activities for violent outcomes, beyond those observed. While monitoring of participants and potential participants at staging areas around Ottawa continues, the activities being observed do not pose a threat that would meet the level of the EA and are able to be managed within regular powers of enforcement. The ability of for protest participants to remobilize quickly to disrupt a POE remains but with little indication that any such disruption could reach the level of the EA thresholds prior to effective intervention by law enforcement.

The known threats that have been discussed above suggest that a rapid re-escalation of events remains a real possibility that must be monitored on an ongoing basis. With such vigilance in place, reassurances from police advisors and with the peace restored both at POEs and in metropolitan areas, a path towards revocation presents as the most prudent path. However, should intelligence change prior the revocation being complete, a decision to revoke should be reviewed urgently.

Parliamentary Process

Pursuant to s. 22 of the Emergencies Act, the Governor in Council may by order in council direct that a proclamation issue revoking the declaration of a public order emergency. The Department of Justice is proactively working on drafts of the order and proclamation in the event that they are needed. The revocation would trigger the 60 day timeframe within which an inquiry must be established into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

In addition, if the GiC revokes the declaration of emergency, the Parliamentary Review Committee must report to the Senate and the House of Commons within seven sitting days pursuant to s. 62(6) of the Act.

In terms of the OIC process, revocation would follow the same path as the request to declare the emergency. Importantly, policy cover would be required prior to OIC process commencing.

Assessment of Timing for Revocation and Recommendation

Several factors must be taken into account in determining the ultimate timing of revocation, including the prior notice requested by financial institutions as well as the time it will take to clear protest locations of concrete barricades and security fencing. These issues should be measured in hours and

days, rather than days and weeks. The process for revocation in Parliament must also be taken into account, which requires policy cover and an expedited OIC process.

Based on the foregoing, it is recommended that steps be taken to revoke the EA proclamation and orders by end of day, Wednesday, February 23, 2022.

Communications Considerations

The public support for the use of the Emergencies Act has been split. A MARU poll conducted between 15-16 February, reflected that two-thirds of Canadians (66%) supported the use of the Emergencies Act and 67% wanted the freedom convoy cleared out. In contrast, a MAINTSTREET poll, conducted just two days later found that 39% of respondents strongly opposed the use of the Emergencies Act and 38% strongly supported it.

While the messaging of the invocation of the Emergencies Act may have acted in itself as a deterrent to those considering joining the movement, it may have also emboldened those hard-core protesters who were looking to oppose the government in any way possible.

Critical to the success of any communications of a possible revocation of the Act will be clear acknowledgement by law enforcement that they have the authorities, the tools and the will necessary to enforce the law and their commitment to the prevention of any residual or new illegal blockades.

It is evident to Canadians that prior to the invocation of the Act, we were facing challenges across the nation, and subsequent to the invocation of the Act, law and order has been restored. It will continue to be important to evaluate and communicate the correlation between the actions taken by law enforcement and the Emergencies Act so as to be as transparent to Canadians.

The trust in institutions and our police has been shaken and Canadians need to be clearly reassured that together with our law enforcement agencies, governments are able to keep Canadians safe, protect people's jobs, and this will help restore confidence in Canada's institutions.

It will be important in our communications to also acknowledge that we will continue to learn from this event. The influence of ideologically motivated actions and extremism that offered an opportunity for the movement to take hold needs to be better understood so that governments at all levels can be better prepared for future events.